IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 405 OF 2007.

KMG Enterprises. ... Appellant.
Versus.
Indusind Bank Ltd. and another. ... Respondents.

Shri Janak Dwarakadas, Senior Counsel with Shri Vishal Kanade i/by M/s.Mahimtura & Co.for the Appellant.

Ms.Rajani Iyer, Senior Counsel with Shri Birendra Saraf, Shri Akshay Patil, Ms.Mrudula Kadam i/by M/s.Vimadalal & Co. for the Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 4th June, 2007.

P.C.:

1. Heard the learned Senior Counsel appearing for the appellant. The Appellant is the original Plaintiff. By the order impugned dated 20th April 2007, the learned Judge of the City Civil Court, Mumbai has declined to grant ad-interim relief in favour of the Appellant.

2. The prayer for interim relief in the Notice of Motion reads thus:

(a) That pending the hearing and final disposal of this suit, this Hon’ble Court be pleased to grant interim injunction restraining the Defendant No.‘ Bank from acting upon the letter (Exhibit "C" to the plaint) and restrain the Defendant No.1 Bank from preventing the Plaintiff and or from interfering with the operation of the

current account by the Plaintiff.

3. The learned Counsel appearing for the Appellant submitted that the view taken by the learned trial Judge that the suit was not maintainable is ex-facie wrong. He pointed out that the interim relief in respect of the same bank account was prayed for by the 2nd Respondent in an application under section 9 of the Arbitration and Conciliation Act, 1996 and the same has not been granted by the learned Single Judge of this Court. He submitted that the account in dispute is the only bank account of the Appellant and serious prejudice will be caused to the Appellant as the 1st Respondent has acted contrary to the mandate by not allowing the operation of the account.

4. I have considered the submissions. By way of ad-interim relief, the prayer made by the Appellant was to permit the Appellant to operate the bank account. The petition under section 9 of the said Act of 1996 is still pending and the order relied upon by the learned Counsel for the Appellant is only an ad-interim order.

5. Considering the nature of the relief sought, no fault can be found with the operative part of the order passed by the learned trial Judge by which he has declined to grant ad-interim relief. The order impugned

is a discretionary order refusing to grant ad-interim relief and it is not possible to interfere with the said order. Appeal is, therefore, dismissed.

6. It is obvious that the observations made by the learned Judge regarding the maintainability of the suit are tentative observations and the Notice of Motion will be finally decided without being influenced by the said observations and confirmation of the impugned order by this Court. All contentions of the parties in the pending Notice of Motion are expressly kept open and the same will be decided uninfluenced by this order.

7. I am told that the contesting Respondents have filed reply to the Notice of Motion. Considering the facts and circumstances of the case, the learned trial Judge is directed to decide the Notice of Motion as expeditiously as possible and preferably within a period of 4 weeks from today.

8. The parties and the trial Court will act on an authenticated copy of this order.

Judge.